

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WYNDHOLME VILLAGE, LLC, *et al.*, *

Plaintiffs and Counter-Defendants *

v. * Civil Action No. L01-3809

NADIF OF WYNDHOLME, LLC, *et al.*, *

Defendants and Counter-Plaintiffs *

* * * * *

MOTION TO STRIKE FISHER AFFIDAVIT AND
ATTACHMENTS THERETO FROM PAPER NO. 79

Now come Wyndholme Village, LLC, James Lancelotta and Katherine Lancelotta, Plaintiffs and Counter-Defendants, by their attorneys, Howard J. Schulman and Schulman & Kaufman, LLC, and move to strike the affidavit of Stuart Fisher and the attachments thereto and, for reasons therefor, state as follows:

1. Defendants and Counter-Plaintiffs have filed a Reply Memorandum (Paper No. 79) to which they attached an affidavit of Stuart Fisher (Exhibit No. 43; Paper No. 80) and have made arguments therein based on this affidavit.

2. Stuart Fisher, who is named as a Defendant in this case, has filed a Suggestion in Bankruptcy in this case. He has also refused to answer interrogatories, produce documents or appear at deposition. He is a key figure in this case. He was the person who organized NADIF of Wyndholme, LLC under the laws of the State of Florida.

3. Given that Fisher has been the agent of the other Defendants at relevant times hereto, it would be inequitable and unfair to permit the Defendants to rely upon the Fisher affidavit--most particularly since he has thumbed his nose at this Court.

4. For the reasons set forth in the accompanying Memorandum of Law, Fisher's affidavit is also insufficient within the meaning of Rule 56(e).

WHEREFORE, for the aforementioned reasons, Plaintiffs and Counter-Defendants respectfully request that the Court strike the November 19, 2002 affidavit of Stuart Fisher which was attached to Defendants' Reply Memorandum in Support of Summary Judgment (Paper No. 79) as Exhibit No. 43 (Paper No. 80) and all references thereto in Paper No. 80.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2003, a copy of Plaintiffs and Counter-Defendants' Motion to Strike Fisher Affidavit and Attachments Thereto from Paper No. 79 was mailed first-class, postage prepaid, to Stuart C. Fisher, 164 Seminole Avenue, Palm Beach, Florida 33480.

Howard J. Schulman